



Industrial Telecommunications Association, Inc.

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June 21, 1996

Michele C. Farquhar, Esq.  
Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C. 20554

Re: *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157*  
**RESPONSE OF ITA REGARDING CLEARINGHOUSE BUSINESS PLANS**

Dear Ms. Farquhar:

*The purpose of this letter is to respond to Comments filed regarding the Public Notice issued by the Wireless Telecommunications Bureau ("Bureau") on April 25, 1996, DA 96-647. In the Public Notice, the Bureau sought comment on whether it would be feasible to have more than one clearinghouse administer the 2 GHz relocation cost-sharing plan that was recently adopted by the Federal Communications Commission ("Commission"). The Bureau also invited entities interested in serving as a cost-sharing clearinghouse to submit business plans that address "at a minimum" the following issues: (1) financial data; (2) timing; (3) accounting methods; (4) confidentiality; (5) neutrality; and (6) dispute resolution.*

*Both the Industrial Telecommunications Association ("ITA") and the Personal Communications Industry Association ("PCIA") submitted business plans in response to the Further Notice. Several parties, including PCIA and certain of its member companies, then filed Comments regarding the two clearinghouse proposals. A number of these Comments — the vast majority of which were filed on behalf of PCS providers — question the advantages of authorizing competing clearinghouses and express support for PCIA as the sole cost-sharing administrator.*

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As shown below, the selection of more than one clearinghouse is absolutely essential if the Bureau's goals of neutrality and efficiency in the application of the cost-sharing plan are to be satisfied. Indeed, the Comments filed by PCIA and its member companies in this proceeding unwittingly demonstrate that the PCS industry cannot be entrusted with administering a sole cost-sharing clearinghouse, particularly if the Commission adopts its tentative conclusion that self-relocating microwave incumbents should be allowed to participate in the cost-sharing plan. Moreover, the selection of PCIA as the sole clearinghouse would be particularly inappropriate in light of PCIA's failure to adequately address in its "Clearinghouse Plan" several of the elements identified by the Bureau in its Public Notice. The following discussion of these elements — as well as even a cursory comparison of the proposals submitted by ITA and PCIA — illustrates that ITA has conducted a thorough analysis of the relevant factors, supported by calculations, exhibits and specific examples, while PCIA has primarily offered conclusory statements and a regurgitation of the Commission's cost-sharing Report and Order.

### The Benefits of Competing Clearinghouses

Competition and choice are fundamental values in our nation's telecommunications policy, as affirmed most recently by the enactment of the Telecommunications Act of 1996. There is no reason why these values should not be extended to the administration of the Commission's 2 GHz relocation cost-sharing plan. In fact, as ITA explained in its Business Plan, competition between clearinghouses would promote a number of desirable effects, including: operating efficiency; an incentive to provide innovative and superior services; the need to listen and respond favorably to marketplace concerns; fast and courteous service; and competitively priced goods and services. (ITA Plan at 7). Competing clearinghouses would also provide a needed balance between the interests of existing PCS licensees, future PCS licensees and microwave incumbents, particularly given the somewhat contentious history of the microwave relocation negotiation process and related rule makings. (See ITA Plan at 6-7).

In arguing that the Commission should select only one clearinghouse, several commenters claim that competition between clearinghouses will serve only to increase administrative costs through the duplication of resources. (See, e.g., Comments of American Portable Telecom, Inc. at 1; Comments of Bellsouth Corporation ("BellSouth") at 2; Comments of PCIA at 2-3). While competition does entail some amount of duplicative costs in most economic markets, nonetheless, competition benefits consumers, because the efficiencies it engenders more than offset this duplication. At any rate, participants in the cost-sharing plan will not bear the brunt of any potentially duplicative costs associated with the establishment of two or more clearinghouses; instead, they will pay transaction fees only to one clearinghouse — in most cases the one they believe has best minimized its administrative and other costs and that offers the most efficiently priced services. In the absence of competition, the solely-designated clearinghouse would operate as a monopoly, with no incentive to keep its costs (and, correspondingly, its prices) low.

PrimeCo Personal Communications, L.P. ("PrimeCo") asserts that because the number of cost-sharing transactions will be declining over time, competing clearinghouses will have increasingly fewer units over which to spread their costs. (Comments of PrimeCo at 1). It is

worth noting, however, that there are several other spectrum reallocation proceedings currently pending at the Commission that will likely involve relocation cost-sharing. For instance, the 2 GHz cost-sharing process may well be extended to parties that pay to relocate incumbents from the 800 MHz Specialized Mobile Radio and 2.1 GHz microwave bands. The clearinghouse(s) selected by the Bureau in the 2 GHz proceeding, having by that time expended much of the necessary start-up costs and acquired valuable expertise, will be in a logical position to assume at least some role in administering any subsequent cost-sharing plans. In any event, given the thousands of microwave links potentially subject to the 2 GHz cost-sharing plan, there will be an ample number of cost-sharing transactions over which two competing clearinghouses may spread their fixed costs. These fixed costs will, after all, be relatively small due to the clearinghouse's limited function and its service-based orientation.

Perhaps more important than the promotion of competition is the Bureau's requirement of neutrality in cost-sharing administration. Notwithstanding the Bureau's request that potential clearinghouses describe how they intend to remain impartial, "especially if both PCS licensees and microwave incumbents are permitted to participate in cost-sharing" (Public Notice at 2), PCIA makes absolutely no mention in its Clearinghouse Plan of the likely event that microwave incumbents will be seeking reimbursement through the cost-sharing measure.<sup>1/</sup> Indeed, PCIA acknowledges that it has "developed the clearinghouse for the benefit of the PCS industry at the behest of its members." (PCIA Plan at 4). Carrying this sentiment even further, BellSouth — one of the entities that is providing initial funding for PCIA's proposed clearinghouse — brazenly proclaims that "[microwave] incumbents have no role in the cost-sharing process." (Comments of BellSouth at 4).

Given such attitudes by PCIA and its member companies, it is hardly surprising that the American Petroleum Institute ("API") fears that incumbents will be reluctant to self-relocate if the PCS industry funds the only clearinghouse. (Comments of API at 2-3). Similarly, PCS licensees in the C through F blocks, whose interests will likely be somewhat adverse to those of the A and B block PCS licensees represented by PCIA, would also stand to benefit from choice among clearinghouses. The mere existence of competition and choice will provide a necessary check against clearinghouse abuses and will encourage each clearinghouse to attract customers by earning and maintaining a reputation of impartiality. Only through the availability of such choice can true neutrality be ensured.

#### Financial Data and Fee Structure

In response to the Bureau's request for financial data regarding clearinghouse operations, ITA provided a detailed description of its projected revenues and anticipated expenses, as well as an itemized projected financial statement for the first two years of the clearinghouse project.

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<sup>1/</sup> PCIA does, however, claim that membership on its proposed clearinghouse Board of Directors "will be open to all entities that are subject to the Commission's cost sharing rules." (PCIA Plan at 4).

*(ITA Plan at 82-88 and Exhibit C-3). In stark contrast, PCIA has merely offered bottom-line estimates of the yearly expenses associated with its proposed clearinghouse, without any showing of the various cost components that presumably formed the basis for these figures. (PCIA Plan at 8). PCIA expects the Commission and interested parties to believe that it "has included generous estimates of the costs to be incurred," yet it fails to identify with any specificity what these costs are. (PCIA Plan at 8). For instance, how much of PCIA's anticipated costs are attributable to software development and computer maintenance? How much has PCIA allocated for personnel expenses? PCIA's "business plan" is entirely silent on such matters.*

*Somewhat incredibly in light of the foregoing, PCIA faults ITA for omitting to submit a balance sheet supporting its financial ability to undertake clearinghouse operations. (Comments of PCIA at 7). While quick to criticize ITA in this regard, PCIA apparently believes that it is itself immune from any like obligation, because several PCS licensees have committed to providing initial funding for PCIA's clearinghouse. (Id.). Yet, PCIA's failure to specify the amount of up-front funding that has been pledged by PCS licensees, coupled with the above-noted absence of any itemized cost estimates, renders PCIA's proposal utterly devoid of any assurances that adequate funding is available. As ITA noted in its Business Plan, it intends to utilize existing internal resources, including its substantial administrative and management information infrastructure and professional staff, to fund clearinghouse initiation activities. (ITA Plan at 13). ITA has also offered to provide the Commission with full financial disclosure of its clearinghouse activities upon request. (ITA Plan at 88).*

*The clearinghouse plans submitted by ITA and PCIA also differ substantially with respect to the fees that cost-sharing participants will be charged. ITA has proposed a service-oriented approach, whereby fees will be assessed on a per link or per task basis, e.g., \$150 per link for PCS Relocator Registration and \$250 plus minimal base station fees for Proximity Threshold Tests. (ITA Plan at 83). PCIA, on the other hand, intends to charge a "transaction fee" of about \$2,000 to all clearinghouse participants.<sup>2/</sup>*

*Pacific Bell Mobile Services ("PacBell") argues that ITA's fee structure will generate excessive fees for large-scale relocations. (Comments of PacBell at 4). If, however, PacBell is truly concerned about equity in the imposition of cost-sharing fees, it should recognize that ITA's task-based approach is inherently more fair, in that it allocates fees in proportion to the amount of services being provided. By contrast, the application of PCIA's fixed transaction fee will effectively require the relocators of small microwave systems to subsidize those who relocate larger systems and who have correspondingly more extensive cost-sharing rights. Moreover, in an effort to limit fees for large-scale relocators, ITA plans to offer PCS licensees (for the price of \$5,000) a CD-ROM that will enable them to conduct their own Proximity Threshold Tests.*

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<sup>2/</sup> *PCIA does not clarify whether this transaction fee will be applied to both initial relocators and later-entrant PCS licensees, nor whether the fee will be assessed more than once upon parties that relocate multiple microwave systems or deploy PCS systems in more than one region.*

(See ITA Plan at 37-39).<sup>3/</sup> Finally, like PCIA, ITA agrees to adjust its fee structure on a regular basis if its fees are greater than its revenues.

#### Accounting Methods

The Bureau asked prospective clearinghouses to describe their accounting methods in detail; for example, the Bureau sought input on how premium payments (which are non-reimbursable) would be separated out. (Further Notice at 2). In this regard, ITA explained that it will require parties seeking reimbursement through the cost-sharing plan to complete a "Microwave Relocation Cost Report," which will contain the illustrative microwave link relocation cost components identified by the Commission, space for additional cost expenditures that do not correspond to the illustrative categories and a section where new or modified tower requirements may be listed. (ITA Plan at 18 and Exhibit B-2). The registering party need not provide, nor does the form seek, information regarding any extraneous costs that may be classified as a premium payment. (ITA Plan at 19). ITA will review all forms for cost items that do not comport with the Commission's relocation reimbursement policies and, where necessary, will conduct clarifying discussions with the registering party prior to final registration and retention within ITA's relocation database. (Id.).

With respect to accounting methods, PCIA's Clearinghouse Plan is yet again deficient. Following a verbatim recitation of the compensable relocation costs listed by the Commission in its cost-sharing Report and Order, PCIA makes the conclusory statements that PCS relocators will be able to obtain reimbursement only for incumbent transaction expenses that are directly attributable to the relocation and that "premium payments will not be reimbursable." (PCIA Plan at 11-12). Unlike ITA, PCIA does not provide any explanation of how it intends to implement these basic precepts of the Commission's cost-sharing rules.

#### Neutrality

PCIA's clearinghouse proposal is perhaps most troubling on the issue of neutrality, particularly when paired with PCIA's apparent opposition to the designation of more than one clearinghouse. (See Comments of PCIA at 2-3). As noted above, PCIA fails even to acknowledge in its Clearinghouse Plan that microwave incumbents, as well as PCS licensees, may well be participating in the cost-sharing measure. Notwithstanding the fact that PCIA's clearinghouse will be funded at the outset by a number of A and B block PCS licensees, PCIA insists that its clearinghouse will be governed in a neutral manner, because a fifteen-member Board of Directors will be elected by all participants in the cost-sharing plan. (See PCIA Plan

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<sup>3/</sup> PCS licensees may also use this CD-ROM to plan future deployments in a manner that minimizes interference with microwave incumbents and thereby reduces their relocation costs. Contrary to the assertions of certain PCS interests, ITA's proposed CD-ROM distribution does not raise confidentiality concerns. Rather, it will contain only publicly available information such as incumbent station locations and PCS authorized spectrum.

at 4-5). While claiming that the proposed governing structure of its clearinghouse "will ensure a sufficiently wide representation of interests so that no one group will be allowed to dominate the Board" (PCIA Plan at 5), PCIA fails to establish any mechanism to guarantee representation on the Board of Directors by minority interests or to prevent majority interests from acting to the detriment of the minority.

Attempting to deflect its own inherent bias as a representative of the PCS industry, PCIA alleges that the undersigned has acted as a consultant "to microwave incumbents in their relocation negotiations." (Comments of PCIA at 5). This is not so. In fact, ITA's technical staff provided only limited technical services to one microwave incumbent — the City of San Diego — in connection with its relocation efforts. These services did not entail the conferral of any advice regarding relocation negotiations; rather, ITA's staff simply conducted a technical analysis to determine which PCS blocks and licensees were implicated by the City of San Diego's microwave network and provided a diagram depicting these findings.

PCIA professes to be more impartial than ITA, because, in contrast to my supposed involvement in relocation negotiations, "PCIA has taken only general policy positions in the PCS proceedings before the FCC." (Comments of PCIA at 5). An examination of some of the "general policy positions" that PCIA has taken reveals the utter hypocrisy of this contention. For example, PCIA has accused certain microwave incumbents of "seeking to misuse the [relocation] rules for private gain" by "demanding payments that dwarf the actual costs of a comparable, relocated system." (See Comments of PCIA, WT Docket No. 95-157 (filed Nov. 30, 1995) at 3-6). Also, of particular relevance to PCIA's role as a potential cost-sharing clearinghouse is its position that the Commission's cost-sharing rules, as currently formulated, are inadequate to prevent abuses by microwave incumbents. (See Reply Comments of PCIA, WT Docket No. 95-157 (filed June 7, 1996) at 4-8). The fact that PCIA has taken these positions does not mean it is unqualified to serve as a cost-sharing clearinghouse. Instead, it underscores the need for competing clearinghouses to ensure that the interests of all participants are properly balanced.<sup>4/</sup>

#### Confidentiality

ITA believes that both its clearinghouse proposal and that of PCIA adequately address concerns about confidentiality. Both proposals recognize the sensitive nature of microwave

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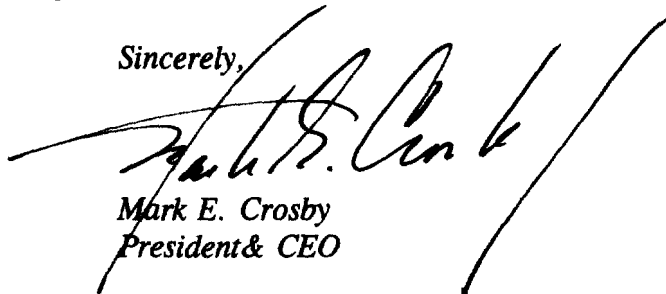
<sup>4/</sup> PCIA contends that ITA's clearinghouse proposal is problematic because it doesn't "interpose any industry governance body between its own management and the clearinghouse." (Comments of PCIA at 5). ITA elected not to propose the creation of an intermediate governing body because it believes that such a measure would unnecessarily increase the operating costs of its clearinghouse. The objective nature of the Proximity Threshold Test and the cost-sharing formula, together with the balance provided through the existence of competing clearinghouses and the availability of dispute resolution procedures, will ensure impartiality in ITA's administration of the cost-sharing plan.

relocation and PCS deployment information, pledge to collect and disseminate only that information which is absolutely essential to the performance of clearinghouse functions and contemplate the execution of non-disclosure or confidentiality agreements with participating entities. (See ITA Plan at 19-22; PCIA Plan at 13). ITA also welcomes PCIA's suggestion that the need for the exchange of potentially confidential information between clearinghouses could be eliminated by requiring later-entrant PCS licensees to file their prior coordination notices with each clearinghouse. (Comments of PCIA at 9-10).

\* \* \* \* \*

In adopting the cost-sharing rules, the Commission responded promptly and thoughtfully to the pleas of both PCS licensees and microwave incumbents for a measure to facilitate system-wide relocations and early PCS deployment. ITA shares the desire of all interested parties that the Commission's cost-sharing plan be implemented as quickly as possible. However, ITA cautions the Commission against sacrificing the neutrality, efficiency and fairness to be gained from the appointment of competing clearinghouses for the apparent simplicity of a single clearinghouse approach. As demonstrated by the foregoing discussion and ITA's Business Plan, ITA has given considerable thought to the responsibilities entailed in administering the cost-sharing rules and is prepared to work with PCIA and cost-sharing participants to ensure the smooth and effective implementation of this important measure.

Sincerely,



Mark E. Crosby  
President & CEO

MEC:bjl

cc: Chairman Reed E. Hundt  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
Commissioner James H. Quello  
Mr. Michael Hamra, Legal Branch, Commercial Wireless Division  
Ms. Laura Smith, Legal Branch, Commercial Wireless Division  
Mr. William F. Caton, The Secretary, FCC

## **CERTIFICATE OF SERVICE**

I, Barbara J. Levermann, hereby certify that a copy of the foregoing RESPONSE OF ITA REGARDING CLEARINGHOUSE BUSINESS PLANS was mailed on this 21st day of June 1996, via first class United States mail, postage prepaid, to the parties listed below:

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